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Date: January 29, 2007/David W. Grillo/

David W. Grillo

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of:

Applicant(s): Gregory J. Mesaros

Examiner: Cuong H. Nguyen

Serial No: 09/922,884

Art Unit: 3661

Filing Date: August 6, 2001

Title: E-COMMERCE VOLUME PRICING

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

APPEAL BRIEF

Dear Sir:

Appellant's representative submits this brief in connection with an appeal of the above-identified patent application. A credit card payment form is filed concurrently herewith in connection with all fees due regarding this appeal brief. In the event any additional fees may be due and/or are not covered by the credit card, the Commissioner is authorized to charge such fees to Deposit Account No. 50-1063 [GEDP101USE].

I. Real Party in Interest (37 C.F.R. §41.37(c)(1)(i))

The real party in interest in the present appeal is eWinWin, Inc., the assignee of the present application.

II. Related Appeals and Interferences (37 C.F.R. §41.37(c)(1)(ii))

Appellant, appellant's legal representative, and/or the assignee of the present application are not aware of any appeals or interferences which may be related to, will directly affect, or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. Status of Claims (37 C.F.R. §41.37(c)(1)(iii))

Claims 1-19, 43-47 and 57-76 stand rejected by the Examiner. The rejection of claims 1-19, 43-47 and 57-76 is being appealed.

IV. Status of Amendments (37 C.F.R. §41.37(c)(1)(iv))

No claim amendments have been entered after the Final Office Action.

V. Summary of Claimed Subject Matter (37 C.F.R. §41.37(c)(1)(v))

A. Independent Claim 1

A relevant portion of independent claim 1 refers to an offers and orders component that receives and aggregates orders for a product from a plurality of buyers (*see e.g.*, page 10, lines 16-21; Fig 5, elements 255, 260, 265), and a logistics component that determines a shipping price for the product for a subset of the plurality of buyers (*see e.g.*, page 9, lines 30-31; page 30, line 16 – page 31, line 2; matching/aggregation system(s) of FIGS. 11-13), the shipping price being determined based at least in part upon the subset of buyers sharing a shipping method (*see e.g.*, page 30, line 16 – page 31, line 2).

B. Independent Claim 43

A relevant portion of independent claim 43 refers to a computer-implemented logistics component that determines a shipping price for a good based on aggregative pricing for a

plurality of buyers, the shipping price being determined based at least in part upon the plurality of buyers sharing a shipping method. (*See e.g.*, page 9, line 16 – page 31, line 2).

C. Dependent Claim 6

Dependent claim 6 refers to a terms and conditions component that manages agreements between users of the system as to business terms and conditions. (*See e.g.*, page 9, lines 24-27; page 28, lines 9-25).

D. Dependent Claim 8

Dependent claim 8 refers to a product relationships component that manages relationships between at least one of a plurality of products and another of the plurality of products. (*See e.g.*, page 9, lines 29-30; page 29, line 22 – page 30, line 2).

E. Dependent Claim 15

Dependent claim 15 refers to a seller agent component that utilizes historical data to determine a pricing strategy for at least one of a plurality of products with respect to at least one of the plurality of buyers. (*See e.g.*, page 32, line 22 – page 34, line 24).

F. Dependent Claim 16

Dependent claim 16 refers to the seller agent component that determines details that at least one of the plurality of sellers should include in an offer to achieve maximum profits. (*See e.g.*, page 32, line 22 – page 34, line 24).

G. Dependent Claim 17

Dependent claim 17 refers to the seller agent component that determines a production schedule for at least one of the plurality of sellers. (*See e.g.*, page 32, line 22 – page 34, line 24).

H. Dependent Claim 18

Dependent claim 18 refers to a buyer agent component that utilizes historical data to assist at least one of the plurality of buyers in finding a best buy for at least one of a plurality of products. (*See e.g.*, page 34, line 25 – page 35, line 25).

I. Dependent Claims 71 and 75

Dependent claims 71 and 75 refer to the logistics component that applies the cost savings to the shipping price for the subset of buyers. (*See e.g.*, page 30, line 4 – page 31, line 2).

J. Dependent Claims 72 and 76

Dependent claims 71 and 75 refer to the logistics component that applies the cost savings to a shipping price for the plurality of buyers. (*See e.g.*, page 30, line 4 – page 31, line 2).

VI. Grounds of Rejection to be Reviewed (37 C.F.R. §41.37(c)(1)(vi))

A. Whether claims 1-19, 43-47 and 57-76 are unpatentable under 35 U.S.C. §103(a) over Pallakoff (US 6,269,343) in view of Thomas, *et al.*, “JIT: Strategies for Distant Suppliers”.

VII. Argument (37 C.F.R. §41.37(c)(1)(vii))

A. Rejection of Claims 1-19, 43-47 and 57-76 under 35 U.S.C. §103(a)

Claims 1-19, 43-47 and 57-76 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Pallakoff (US 6,269,343), in view of Thomas, *et al.*, “JIT: Strategies for Distant Suppliers” (hereinafter referred to as “Thomas”). It is respectfully requested that this rejection be reversed for at least the following reasons. The cited reference fails to teach or suggest each and every feature of the subject invention as claimed.

To reject claims in an application under §103, an examiner must establish a *prima facie* case of obviousness. A *prima facie* case of obviousness is established by a showing of three basic criteria. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. *Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.* See MPEP §706.02(j). (Emphasis added). The teaching or suggestion to make the claimed combination and the reasonable expectation of success *must both be found in the prior art* and not based on applicant’s disclosure. *See In re Vaack*, 947

F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). (Emphasis added).

The claimed subject matter relates to a system that facilitates volume pricing. More specifically, the system can aggregate orders for a product as well as aggregating shipping for the orders by, *e.g.*, determining a shipping cost when disparate buyers share a shipping method. In particular, independent claim 1 (and similarly independent claim 43) recites, “an offers and orders component that receives and aggregates orders for a product from a plurality of buyers; and **a logistics component that determines a shipping price for the product** for a subset of the plurality of buyers, the **shipping price being determined based at least in part upon the subset of buyers sharing a shipping method.**” The references, alone or when combined, do not teach or suggest these novel features.

Pallakoff relates to electronic commerce and more particularly marketing products and services utilizing the Internet. Nowhere does Pallakoff disclose or suggest **a logistics component that determines a shipping price for the product ... the shipping price being determined based at least in part upon the subset of buyers sharing a shipping method** as set forth in the subject claims. Instead, Pallakoff discloses aggregating demand and providing demand based pricing. (See col. 1, ll. 53-55). Although Pallakoff discloses a shipping charge can be applied to a buyer's credit card (*see* col. 8, ll. 41-47), the reference is silent regarding an offers and orders component interrelated with **a logistics component that determines a shipping price**. Moreover, a shipping charge in Pallakoff is materially distinct from a shipping price of the subject claims, because Pallakoff is utterly void of any teaching or suggestion that the shipping charge is **determined based at least in part upon the subset of buyers sharing a shipping method**.

At page 4 of the Final Office Action (dated August 28, 2006), the Examiner concedes these deficiencies, but incorrectly contends that Thomas may remedy the deficiencies with respect to Pallakoff. Appellant's representative disagrees. In particular, Thomas does not teach or suggest sharing a **shipping method**. Rather, Thomas simply indicates that **shipping costs** can be shared. A shipping method is materially distinct from shipping costs just as how an item is shipped is materially distinct from how much one pays to ship the item. Hence, neither Thomas nor Pallakoff, either alone or when combined, disclose or suggest **a logistics component that determines a shipping price for the product ... the shipping price being determined based at**

least in part upon the subset of buyers sharing a shipping method as set forth in the subject claims.

The Examiner maintains that the combination of Pallakoff and Thomas discloses all the claim features. However, the Examiner concedes that Pallakoff does not teach the aspects called out *supra*, and has relied upon Thomas to show subject matter that is distinct from what is claimed. It is readily apparent that Thomas does not teach or suggest **buyers sharing a shipping method**, but rather “sharing shipping **costs** [as opposed to a shipping **method**] with other **manufacturers** [as opposed to **buyers**]” Thus, the combination of Pallakoff and Thomas is insufficient to read upon the subject claims and the Examiner has provided no support for a contrary conclusion. Accordingly, the Examiner has failed to make a *prima facie* case for obviousness and this rejection should be reversed.

Furthermore, the Examiner has made overly broad and inaccurate generalizations with respect to the subject claims and further relied upon numerous “well-known in the art” statements to improperly support this rejection. Substantially, the Examiner as done little more than describe the features of the claimed subject matter in increasingly broader terms as though by describing them in this manner, the claims become obvious, even without a suitable reference. In essence, the Examiner is selectively giving weight to some claimed features while completely ignoring others to generate an unreasonably broad claim interpretation. As one example, the Examiner has excised from the claims all distinguishing features and interprets claim 1 as though it recites nothing more than an interface screen and a calculator. (See page 2 of Final Office Action). Appellant’s representative duly traversed these well-known in the art statements, requesting the Examiner provide proper supporting references or withdraw the rejection pursuant to MPEP § 2144.3. In addition, appellant’s representative requested the Examiner provide evidentiary support for “an interface screen” and a “calculator” that have all features of the subject claims. The Examiner has done neither.

Rather, the Examiner has parted entirely from any art of reference and suggested, “it is very simple, and very easy to share 50/50 of shipping cost between ... buyers; therefore, there is no inventive concept.” (See Advisory Action dated December 19, 2006). In essence, the culmination of all the prior prosecution, and that which the Examiner relies upon to uphold this rejection is a description of the barest of possible situations, and then the conclusion -- not that any reference teaches the claimed features, but instead -- that it would be “simple and very easy”

to do. It is respectfully submitted that this rejection is therefore impermissible, as simplicity is not a valid standard for obviousness, and, *e.g.*, novel combinations, even very simple ones, are afforded patent protection. Moreover, the bare situation offered by the Examiner is not a precise analogy *vis-à-vis* the claimed subject matter, so even if simplicity were valid grounds for a rejection, the Examiner's analysis still fails. In particular, what is tacitly lacking from the Examiner's crude analogy as well as from the cited art is the shipping charge is ***determined based at least in part upon the subset of buyers sharing a shipping method.*** Accordingly, this rejection with respect to independent claims 1 and 43, as well as all claims that depend therefrom should be reversed.

Dependent claim 6

No reference of record discloses or suggests ***a terms and conditions component that manages agreements between users of the system as to business terms and conditions.*** The Examiner contends that such claimed aspects are disclosed by Pallakoff at col. 1, ll. 55-58 and col. 12, ll. 5-10. Applicant's representative respectfully disagrees with such a contention. While Pallakoff uses the words "term" and "condition" in its specification, the cited passages clearly do not relate to a terms and conditions component. In more detail, the cited passage at col. 1, ll. 55-58 relates to *conditional offers*. The cited passage at col. 12, ll. 5-10 establishes the definition of system operator and reads "The *term* 'system operator' as used herein does not necessarily refer to an individual. The *term* refers to..." It is readily apparent the Examiner has done little more than a key word search that resulted in locating identical words being disclosed, but with unrelated meanings and contexts.

Dependent claim 8

No reference of record discloses or suggests ***a product relationships component that manages relationships between ... products.*** At page 7 of the Final Office Action, the Examiner concedes that Pallakoff does not teach these features. In addition, the Examiner diverges from what is claimed and argues that Pallakoff discloses a database, and therefore it would have been obvious to employ a relational database. Assuming *arguendo* it would have been obvious to employ a relational database in Pallakoff, such still does not read upon the claims (*e.g.*, claims 8-10). In particular, what is claimed relates to relationships between one set

of products and another set of products, not what type of database representative data structures are stored.

Dependent claim 15

No reference of record discloses or suggests the seller agent component utilizes historical data to determine ***a pricing strategy for at least one of a plurality of products with respect to at least one of the plurality of buyers***. The Examiner argues substantially that it is old and well-known that customers' historical data/profiles have been widely used for selling products. Assuming this to be true, such does not encompass the specificity to read upon the subject claim. In particular, using historical data for selling products does not teach or suggest determining ***a pricing strategy for at least one of a plurality of products with respect to at least one of the plurality of buyers***.

Dependent claim 16

No reference of record discloses or suggests the seller agent component determines details ***that at least one of the plurality of sellers should include in an offer to achieve maximum profits***. The Examiner incorrectly argues at page 6 of the Final Office Action that this feature is inherently disclosed by Pallakoff by virtue of providing detailed information of a seller in an offer. However, Pallakoff is utterly void of any teaching (inherent or otherwise) of a seller agent making a determination such as the claim recites.

Dependent claim 17

No reference of record discloses or suggests the seller agent component determines a production schedule for at least one of the plurality of sellers. At page 8 of the Final Office Action, the Examiner merely alleges Pallakoff could provide such information. How this could be done is not explained, only that it "could". Appellant's representative notes yet again, the Examiner is not supporting conclusions by what is properly taught in the cited references. Rather, as here, the Examiner restates the claims in some fashion (generally in a manner that is believed to be misconstrued and/or imprecise), then proceeds to suggest 1) either Pallakoff has the potential to relate to what is claimed; 2) that it is well known (without a supporting

reference); or 3) that it would be simple to do this. None of these three techniques are appropriate to uphold a rejection.

Dependent claim 18

No reference of record discloses or suggests the buyer agent component utilizes historical data to assist at least one of the plurality of buyers in finding a best buy for at least one of a plurality of products. At page 8 of the Final Office Action, the Examiner argues certain features of claim 18 are merely an intended use of the system. However, this assertion is also a mischaracterization because reciting component capability is not an intended use. In essence, the Examiner's analysis purports that the references disclose a buyer agent component, but a buyer agent component that cannot assist at least one of the plurality of buyers. Applicant's representative notes that if the buyer agent component of the Examiner's analysis cannot assist at least one of the plurality of buyers, then it is not the buyer agent component of the subject claims, irrespective of how either one is used or intended to be used.

Dependent claims 71 and 75

No reference of record discloses or suggests the logistics component applies the cost savings to the shipping price ***for the subset of buyers***. In particular, the cost savings from sharing a shipping method can be repatriated to the subset of buyers that share the shipping method in the form of a discount on the price of the product(s) ordered. The Examiner argues at page 9 of the Final Office Action that this is well-known, but the discussion associated therewith appears to be off the mark from what it claimed. The Examiner argues it is well-known to ship many items going to the same customer and/or destination in the same box. Be that as it may, this assertion does not read on the claims and is therefore insufficient to maintain a rejection.

Dependent claims 72 and 76

No reference of record discloses or suggests the logistics component applies the cost savings to a shipping price ***for the plurality of buyers***. Similar to claims 71 and 75, however, the cost savings can subsidize all buyers of the item, rather than just those buyers sharing a shipping method.

B. Conclusion

For at least the above reasons, the claims currently under consideration are believed to be patentable over the cited references. Accordingly, it is respectfully requested that the rejections of claims 1-19, 43-47 and 57-76 be reversed.

If any additional fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063.

Respectfully submitted,

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VIII. Claims Appendix (37 C.F.R. §41.37(c)(1)(viii))

1. A system that facilitates volume pricing, comprising:

an offers and orders component that receives and aggregates orders for a product from a plurality of buyers; and

a logistics component that determines a shipping price for the product for a subset of the plurality of buyers, the shipping price being determined based at least in part upon the subset of buyers sharing a shipping method.

2. The system of claim 1, further comprising a catalog component that manages a listing of a plurality of products.

3. The system of claim 1, further comprising a users and groups component that manages information of a plurality of users of the system.

4. The system of claim 1, further comprising an access control component that manages access to a plurality of features of the system.

5. The system of claim 1, further comprising a messaging component that manages communication between the system, other systems, and a plurality of users of the system.

6. The system of claim 1, further comprising a terms and conditions component that manages agreements between users of the system as to business terms and conditions.

7. The system of claim 1, further comprising a blanket pricing component that manages agreements between buyers and sellers as to product prices.

8. The system of claim 1, further comprising a product relationships component that manages relationships between at least one of a plurality of products and another of the plurality of products.

9. The system of claim 8, the relationship between at least one of the plurality of products and another of the plurality of products is a byproduct relationship.
10. The system of claim 8, the relationship between at least one of the plurality of products and another of the plurality of products is a product family relationship.
11. The system of claim 1, further comprising a RFQ/RFO/RFP component that manages quote, offer, and product requests for a plurality of products.
12. The system of claim 1, further comprising an invoicing component that manages system accounts.
13. The system of claim 1, further comprising an agents component that performs routine tasks and to provide decision support for the plurality of buyers and a plurality of sellers.
14. The system of claim 13, the agents component includes a seller agent component and a buyer agent component.
15. The system of claim 14, the seller agent component utilizes historical data to determine a pricing strategy for at least one of a plurality of products with respect to at least one of the plurality of buyers.
16. The system of claim 14, the seller agent component determines details that at least one of the plurality of sellers should include in an offer to achieve maximum profits.
17. The system of claim 14, the seller agent component determines a production schedule for at least one of the plurality of sellers.
18. The system of claim 14, the buyer agent component utilizes historical data to assist at least one of the plurality of buyers in finding a best buy for at least one of a plurality of products.

19. The system of claim 14, the buyer agent component automatically creates an order for at least one of a plurality of products for at least one of the plurality of buyers.

20-42. (Cancelled)

43. A system for volume pricing, comprising:

a server configured to receive orders for a product from a plurality of different buyers via at least one remote computer system, the server comprising:

a processor;

a memory coupled to the processor, the memory stores a first price schedule and a second price schedule, the first price schedule determines a first price for the product for at least one of the plurality of different buyers and the second price schedule determines a second price for the product for the other plurality of different buyers;

a network interface coupled to the processor for transmitting and receiving data with at the least one remote computer system; and

a computer-implemented logistics component that determines a shipping price for a good based on aggregative pricing for a plurality of buyers, the shipping price being determined based at least in part upon the plurality of buyers sharing a shipping method.

44. The system of claim 43, the first and second price schedules vary in accordance with a total quantity of product ordered.

45. The system of claim 43, the first and second price schedule vary in accordance with time.

46. The system of claim 43, the server provides the plurality of different buyers access to view at least one of the first and second price schedules via one or more of the at least one remote computer system.

47. The system of claim 43, the server limits a period during which orders for the product are accepted to an open session period.

48-56 (Cancelled)

57. The system of claim 43, the first and second price schedule vary in accordance with at least one of special offers and coupons possessed by at least one buyer of the plurality of buyers

58. The system of claim 43, the first and second price schedule vary in accordance with buyer status.

59. The system of claim 44, the total quantity is based in part on a conditional order where a buyer agrees to place an order if the price drops below a specified level.

60. The system of claim 44, the total quantity is based in part on a conditional order where buyer agrees to place an order if the aggregative pricing reaches a certain percentage discount.

61. The system of claim 43, the server provides a plurality of private business forums that offer products for sale in accordance with differing price schedules.

62. The system of claim 43, the server provides an order web page that enables the seller to provide information to the seller, the information is at least one of purchase order number, quantity of product, product options, billing information, shipping information, coupon information, and gift certificate information.

63. The system of claim 43, further comprising a security component that manages access to the server.

64. The system of claim 63, the security component assigns disparate buyers different permission levels, the disparate permission levels allow buyers varying levels of activity.

65. The system of claim 64, the varying levels of activity comprising read permissions, edit permissions, place order permissions, administrator permissions, and override permissions.

66. The system of claim 43, further comprising a messaging module that enables communication between buyers and a remote computer system.
67. The system of claim 66, the messaging module communicates via at least one of email, fax, mobile devices, instant message devices, bulletin boards, and a buyer homepage.
68. The system of claim 43, the memory stores a blanket pricing module that provides discount pricing to a buyer.
69. The system of claim 43, the memory stores an agent module that uses at least one of historical data and buyer input data to suggest a function to a buyer.
70. The system of claim 1, the logistics component facilitates shipping aggregation for the subset of buyers, the shipping aggregation creates a cost savings for the product.
71. The system of claim 70, the logistics component applies the cost savings to the shipping price for the subset of buyers.
72. The system of claim 70, the logistics component applies the cost savings to a shipping price for the plurality of buyers.
73. The system of claim 1, an order from at least one of the plurality of buyers is independent from other orders received.
74. The system of claim 43, the computer-implemented logistics component facilitates shipping aggregation for the plurality of different buyers, the shipping aggregation creates a cost savings for the product.
75. The system of claim 74, the logistics component applies the cost savings to the shipping price for at least one of the plurality of different buyers and the other plurality of different buyers.

76. The system of claim 43, an order from at least one of the plurality of different buyers is independent from other orders received.

IX. Evidence Appendix (37 C.F.R. §41.37(c)(1)(ix))

None.

X. Related Proceedings Appendix (37 C.F.R. §41.37(c)(1)(x))

None.